Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Market Entry and Regulation of	)	IB Docket No. 95-22
Foreign-affiliated Entities	)	RM-8355
	)	RM-8392

COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated telephone operating companies, hereby submits Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice" or "NPRM") in the above-captioned proceeding regarding market entry and regulation of foreign-affiliated entities.[1] GTE has a vital interest in this proceeding as it is affiliated with both foreign entities and a U.S. international common carrier.[2]

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1 Notice Of Proposed Rulemaking, *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22 RM-8355 RM-8392, FCC 95-53, released February 17, 1995.

2 GTE Corporation owns or has a controlling interest in GTE Hawaiian Tel Incorporated a U.S. international carrier, Compañia Dominicana de Teléfonos ("Codetel") and Compañia Anónima Nacional Teléfonos de Venezuela ("CANTV"), and BC Telecom Inc. and Québec -Téléphone, local companies in the Dominican Republic, Venezuela and Canada, respectively.

INTRODUCTION

In this proceeding, the Commission attempts to further advance its goals for international telecommunications:

1. To promote effective competition in the global market for communications services;

2. To prevent anticompetitive conduct in the provision of international services or facilities; and

3. To encourage foreign governments to open their communications markets.

As set forth in the Notice, the Commission is attempting to secure for U.S. international telecommunications consumers reduced rates, increased quality and new innovative services. While recognizing the increased participation in U.S. markets by foreign carriers, the Commission finds that foreign markets have not been as open to U.S. carriers. In an effort to mitigate this asymmetric situation, the Commission proposes to modify its Section 214[3] requirements by moving from a case-by-case analysis of the foreign country's openness to U.S. carriers to an effective market access standard.

DISCUSSION

I. GTE supports a more flexible determination of effective market access.

The Commission proposes (at ¶43) to adopt a more explicit entry standard for foreign-owned or affiliated international carriers, instead of relying

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[3] 47 U.S.C. §214.

on a case-by-case determination. GTE supports a more flexible approach in considering effective market access of U.S carriers to foreign markets, one which recognizes that the environment in foreign markets differs substantially from the U.S. market.

While GTE commends the Commission's interest in encouraging global communications and in opening foreign markets to U.S. carriers, the Commission must recognize that other sovereign countries have legitimate internal policies and must be permitted to develop their own communications policies. Many foreign countries are not currently as open to competition as the U.S. market.[4] Foreign administrations have not opened their markets to the degree of the U.S. for many reasons; *e.g.*, economic, technology and political. The Commission must recognize these differences while encouraging global competition.

GTE agrees with the Commission that a comparable market access standard which requires essentially identical competitive opportunities as in the U.S., such as that advocated by AT&T, is too restrictive and would virtually eliminate market entry by foreign carriers. The competitive markets developed in the United States within the last few years can only be matched by a small number of other countries. A standard that considers other factors allows for

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4 GTE disagrees with the Commission's premise that foreign carriers necessarily have significant influence in forcing liberalization of markets in their own countries. Often, the foreign government's policies are determined without regard to the carrier's input.

these differences and encourages other countries to adopt more open market policies.

While the Commission maintains in the Notice that the standard proposed is flexible enough to consider all the public interest factors, GTE is concerned that the standard will unnecessarily preclude carriers from countries with telecommunications markets far less developed than the United States from entry into the U.S. market without encouraging the opening of foreign markets.

II. Cost-based accounting rates should not be a requirement for foreign carrier entry.

GTE agrees with the Notice (at ¶42) that it is not necessary to adopt cost-based accounting rates as a condition for foreign carrier entry.[5] The Commission is correct in assuming that effective market access will result in the lowering of accounting rates. As an example, the emergence of new carrier alternatives to established carriers in foreign countries is a primary force in driving accounting rates down. These new carriers often offer U.S. carriers lower accounting rates than the established administration. New entrants provide the incentive to the U.S. carrier to establish a new correspondent

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5 The Commission has previously addressed this very issue and decided that the best course of action was to work through the International Telecommunication Union ("ITU," formerly the Comité Consultatif International Télégraphique et Téléphonique ("CCITT")) and seek revisions to its regulations to encourage foreign administrations to adopt cost-based accounting rates. *See Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II Second Report and Order and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040, 8043 (1992), *recon. pending*.

agreement, notwithstanding that it may incur additional management costs and may require additional facilities or sub-optimal use of in-place facilities with the established administration. This action creates pressure on the established administration to lower its accounting rates or lose traffic to competitors.

It is because of competitive pressures that Codetel has lowered its accounting rates for the Dominican Republic. Beginning in 1994, Codetel started offering volume-based accounting rates to its U.S. correspondents to improve its price competitiveness and to stimulate inbound traffic flow. This clearly validates the Commission's assumption that effective market access will drive accounting rates down and that cost-based accounting rates as a condition for market entry is unnecessary.

III. Dominant carrier safeguards should apply to foreign carriers whether participating in the U.S. as a reseller or a facilities-based carrier.

The Notice (at ¶72) tentatively concludes that there is no need to regulate as closely foreign carrier entry into the U.S. resale market as it has proposed for facilities-based entry. Thus, the effective market access standard proposed for facilities-based foreign carriers would not apply to entry of foreign carriers into the U.S. international resale market.

GTE believes that the Commission should include international resale carriers in its application of an effective market access standard. While the Commission (at ¶72) states that "[t]here is not as substantial a risk of anticompetitive harm to the global market when we allow foreign carriers into the

U.S. resale market," there has been harm. GTE submits that resellers and call aggregators have caused significant declines in inbound traffic to foreign countries and have exerted considerable market pressure. Rather than creating incentives for foreign countries to liberalize their markets, this causes countries to react to a loss of inbound traffic that is creating a distortion in their inbound/ outbound ratio.

If the Commission does not include foreign-owned resellers in its entry determination, GTE believes that foreign-owned U.S. carriers should be declared dominant on routes in which they have control of both ends -- the U.S. and the foreign country - even if the U.S. portion is through resale. These self-corresponding companies could exert greater market influence than could carriers without dual-end control.

GTE disagrees with the finding in the NPRM that a reseller has little control or flexibility. Control of both ends, whether by facilities or through resale, provides the opportunity to leverage advantages created by self-correspondence which could be significant. A U.S. reseller owned by a foreign carrier has the potential to greatly influence the market. When a foreign carrier owns a U.S. reseller, it has the ability to engage in predatory tactics by manipulating the prices of its services.

GTE believes that there is potential competitive harm in continuing to permit unlimited foreign-carrier entry for switched resale. Prior to 1993, there was considerable fraudulent calling between the Dominican Republic and the United States. With the implementation by AT&T of its NetProtect service, this fraudulent calling has significantly decreased. It now appears that these fraudulent callers have begun using "calling centers" as an inexpensive way to make calls. Calling centers exist in New York City, New Jersey, Boston, Rhode Island, Miami, and other metropolitan areas with large foreign communities. These calling centers resell the international long distance service of traffic aggregators, who through sheer volume, are able to secure low international wholesale rates to foreign countries. These traffic aggregators and calling centers are highly competitive and continually whipsaw U.S. facilities-based carriers to secure the best wholesale rates possible. Any carrier, be it a facilities based carrier or a resell carrier, that has enough power to substantially impact rates should be included in any regulations established by the Commission.

Without the safeguards imposed by dominant classification, the Commission could not oversee the process to ensure that other competitors are not unfairly disadvantaged. GTE strongly believes any foreign carrier engaging in any form of reselling international services in the U.S. should be subject to dominant carrier scrutiny. Such rules should apply whether carriers are owned or affiliated with foreign companies or even when they directly engage in marketing activities in the United States. In doing so, the Commission would further its goals of promoting effective competition and of preventing anticompetitive conduct in the provision of international services.

Finally, GTE supports streamlined regulation, but only when it is applied equally to all similarly situated market participants. Any change to tariff filing requirements for dominant foreign-affiliated carriers[6] only should be made if the same requirement is applied to U.S. owned dominant carriers. Asymmetric regulations should not be put in place simply because a carrier is foreign owned.

IV. There is ample precedent to support a standard of affiliation with a ten percent interest.

The Commission seeks (at ¶57) to establish a new affiliation standard that includes, along with a controlling interest, a minimum ownership interest. GTE does not object to a five percent interest as advocated by AT&T,[7] but agrees with the Commission that this might impose unnecessary administrative burdens on potential entrants. There is ample precedent, as noted by the Commission (at ¶59) to warrant scrutiny at greater than ten percent ownership.

GTE also recommends that the Commission "should revise its definition of affiliation adopted in *International Services*"[8] to match whatever definition is established in this proceeding in order to eliminate the confusion that arises when the same word has different definitions.

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6 NPRM at ¶85.

7 *Id.* at ¶58.

8 *Id.* at ¶66.

V. The Commission should limit only foreign-owned carriers from refiling. There is no need to codify the proportionate return policy.

GTE does not agree with AT&T's proposal on refiling.[9] Refiling is any distortion of the actual origination and termination points of an international call, such as call-back, reselling sent-collect services, and by re-originating traffic that would normally be sent on a transit basis. GTE proposes that the Commission limit foreign-owned carriers operating in the United States from refiling terminating or originating U.S. international traffic.

GTE does not believe that the Commission needs to codify its proportionate return policy.[10] Codification may eliminate the flexibility the Commission now has. GTE believes the present policy, as detailed in *Mackay Radio*, 19 FCC 1321, 1340 (1954), best serves the public interest by accommodating proportionate return as a guiding principle in the Commission's deliberations. Codification will not have the effect desired by the Commission, as U.S. carriers do not have control over traffic handled by foreign administrations. Further, codifying the proportionate return policy confers a competitive advantage to established international correspondents and encourages the entrenching of existing market arrangements. Codification could contravene the spirit of the Commission's efforts to foster competition and

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9 *Id.* at ¶91.

10 *Id.*

reduce international accounting rates by reducing the Commission's ability to employ the policy in a flexible manner.

Respectfully submitted,

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